

# House File 166 - Introduced

HOUSE FILE 166

BY HAGENOW

(COMPANION TO LSB 2089SS BY  
WARD)

## A BILL FOR

- 1 An Act creating the transparency in private attorney contracts
- 2 Act.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 13.7, Code 2011, is amended to read as  
2 follows:

3 **13.7 Special counsel.**

4 Compensation shall not be allowed to any person for services  
5 as an attorney or counselor to an executive department of the  
6 state government, or the head thereof, or to a state board  
7 or commission. However, the executive council may employ  
8 legal assistance, ~~at a reasonable compensation,~~ in a pending  
9 action or proceeding to protect the interests of the state,  
10 ~~but only upon a sufficient showing, in writing, made by the~~  
11 ~~attorney general, that the department of justice cannot for~~  
12 ~~reasons stated by the attorney general perform the service,~~  
13 ~~which reasons and action of the council shall be entered~~  
14 ~~upon its records. When the attorney general determines that~~  
15 ~~the department of justice cannot perform legal service in an~~  
16 ~~action or proceeding, the executive council shall request the~~  
17 ~~department involved in the action or proceeding to recommend~~  
18 ~~legal counsel to represent the department. If the attorney~~  
19 ~~general concurs with the department that the person recommended~~  
20 ~~is qualified and suitable to represent the department, the~~  
21 ~~person recommended shall be employed. If the attorney general~~  
22 ~~does not concur in the recommendation, the department shall~~  
23 ~~submit a new recommendation pursuant to chapter 23B. This~~  
24 section does not affect the general counsel for the utilities  
25 board of the department of commerce, the legal counsel of the  
26 department of workforce development, or the general counsel for  
27 the property assessment appeal board.

28 **Sec. 2. NEW SECTION. 23B.1 Citation.**

29 This chapter may be known and cited as the "*Transparency in*  
30 *Private Attorney Contracts Act*".

31 **Sec. 3. NEW SECTION. 23B.2 Definitions.**

32 For the purposes of this chapter:

33 1. "*Government attorney*" means an attorney employed by the  
34 state as a staff attorney in the attorney general's office.

35 2. "*Private attorney*" means any private attorney or law

1 firm.

2 3. "*State*" means the state of Iowa and includes state  
3 officers, departments, boards, commissions, divisions, bureaus,  
4 councils, and units of organization, however designated, of the  
5 executive branch of state government, and any of its agents.

6 Sec. 4. NEW SECTION. 23B.3 **Contracts for legal services.**

7 1. The state shall not enter into a contingency fee contract  
8 with a private attorney unless the attorney general makes a  
9 written determination prior to entering into such a contract  
10 that contingency fee representation is both cost-effective  
11 and in the public interest. Any written determination shall  
12 include specific findings for each of the following factors:  
13 a. Whether sufficient and appropriate legal and financial  
14 resources exist within the attorney general's office to handle  
15 the matter.

16 b. The time and labor required, the novelty, complexity, and  
17 difficulty of the questions involved, and the skill required to  
18 perform the attorney services properly.

19 c. The geographic area where the attorney services are to  
20 be provided.

21 d. The amount of experience desired for the particular  
22 kind of attorney services to be provided and the nature of the  
23 private attorney's experience with similar issues or cases.

24 2. If the attorney general makes the determination  
25 described in subsection 1, the attorney general shall issue a  
26 request for proposals from private attorneys to represent the  
27 department of justice on a contingency fee basis, unless the  
28 attorney general determines that requesting proposals is not  
29 feasible under the circumstances and sets forth the basis for  
30 this determination in writing.

31 3. a. The state shall not enter into a contingency fee  
32 contract that provides for a private attorney to receive  
33 an aggregate contingency fee in excess of the sum of the  
34 following:

35 (1) Twenty-five percent of any recovery up to and including

1 ten million dollars.

2 (2) Twenty percent of any portion of any recovery that  
3 exceeds ten million dollars up to and including fifteen million  
4 dollars.

5 (3) Fifteen percent of any portion of any recovery that  
6 exceeds fifteen million dollars up to and including twenty  
7 million dollars.

8 (4) Ten percent of any portion of any recovery that exceeds  
9 twenty million dollars up to and including twenty-five million  
10 dollars.

11 (5) Five percent of any portion of any recovery that exceeds  
12 twenty-five million dollars.

13 *b.* The aggregate contingency fee of any recovery shall not  
14 exceed fifty million dollars, exclusive of reasonable costs and  
15 expenses, and regardless of the number of lawsuits filed or the  
16 number of private attorneys retained to achieve the recovery.

17 4. The attorney general shall develop a standard addendum to  
18 every contract for contingent fee attorney services that shall  
19 be used in all cases, describing in detail what is expected of  
20 both the contracted private attorney and the state, including,  
21 without limitation, all of the following requirements:

22 *a.* A government attorney shall retain complete control over  
23 the course and conduct of the case.

24 *b.* A government attorney with supervisory authority shall be  
25 personally involved in overseeing the litigation.

26 *c.* A government attorney shall retain veto power over any  
27 decisions made by the contracted private attorney.

28 *d.* A defendant that is the subject of such litigation may  
29 contact the lead government attorney directly, without having  
30 to confer with the contracted private attorney.

31 *e.* Decisions regarding settlement of the case shall be  
32 reserved exclusively to the discretion of the government  
33 attorney and the state.

34 5. Copies of any executed contingency fee contract as  
35 well as the attorney general's written determination to

1 enter into a contingency fee contract with a private attorney  
2 shall be posted on the attorney general's website for public  
3 inspection within five business days after the date the  
4 contract is executed and shall remain posted on the website for  
5 the duration of the contingency fee contract, including any  
6 extensions or amendments thereto. Any payment of contingency  
7 fees shall be posted on the attorney general's website within  
8 fifteen days after the payment of such contingency fees to the  
9 private attorney and shall remain posted on the website for at  
10 least one year thereafter.

11 6. Any private attorney under contract to provide services  
12 to the state on a contingency fee basis shall, from the  
13 inception of the contract until at least four years after  
14 the contract expires or is terminated, maintain detailed  
15 current records, including documentation of all expenses,  
16 disbursements, charges, credits, underlying receipts and  
17 invoices, and other financial transactions that concern the  
18 provision of such attorney services. The private attorney  
19 shall make all such records available for inspection and  
20 copying upon request in accordance with chapter 22. In  
21 addition, the private attorney shall maintain detailed  
22 contemporaneous time records for the attorneys and paralegals  
23 working on the matter in increments of no greater than  
24 one-tenth of an hour and shall promptly provide these records  
25 to the attorney general, upon request.

26 7. The attorney general shall submit a report to the  
27 secretary of the senate and the chief clerk of the house of  
28 representatives describing the use of contingency fee contracts  
29 with private attorneys in the preceding calendar year by  
30 February 1 of each year. At a minimum, the report shall  
31 include all of the following information:

32 a. Identify all new contingency fee contracts entered into  
33 during the year and all previously executed contingency fee  
34 contracts that remain current during any part of the year, and  
35 for each contract describe:

1 (1) The name of the private attorney with whom the state has  
2 contracted, including the name of the attorney's law firm.

3 (2) The nature and status of the legal matter.

4 (3) The name of the parties to the legal matter.

5 (4) The amount of any recovery.

6 (5) The amount of any contingency fee paid.

7 b. Copies of any written determinations made under  
8 subsection 1 or 2 during the year.

9 Sec. 5. NEW SECTION. 23B.4 No expansion of authority to  
10 contract.

11 This chapter shall not be construed to expand the authority  
12 of a state agency or state agent to enter into contracts where  
13 no such authority previously existed.

14 Sec. 6. NEW SECTION. 23B.5 Chapter inapplicable.

15 This chapter shall not apply to legal services contracts  
16 under chapter 13B.

17 EXPLANATION

18 This bill creates the transparency in private attorney  
19 contracts Act in new Code chapter 23B to address the procedure  
20 for retention of a private attorney by this state defined to  
21 include state officers, departments, boards, commissions,  
22 divisions, bureaus, councils, and units of organization,  
23 however designated, of the executive branch of state  
24 government, and any of its agents.

25 The bill specifies a procedure for the state's retention of a  
26 private attorney on a contingency fee basis. The bill requires  
27 the attorney general to analyze certain factors and make a  
28 written determination that the contingency fee representation  
29 will be both cost-effective and in the public interest prior  
30 to entering into a contract and prior to issuing a request  
31 for proposals from private attorneys or making a written  
32 determination that such a request is not feasible under the  
33 circumstances.

34 All contingency fees in the bill are subject to tiered  
35 limits and an aggregate cap of \$50 million, exclusive of

1 reasonable costs and expenses (25 percent of any recovery up  
2 to and including \$10 million; plus 20 percent of the next  
3 \$5 million in recoveries; plus 15 percent of the next \$5  
4 million in recoveries; plus 10 percent of the next \$5 million  
5 in recoveries; plus 5 percent of any portion of the recovery  
6 that exceeds \$25 million). All contingency fee contracts  
7 must include certain standard provisions to help assure  
8 that government attorneys retain absolute control over the  
9 litigation. The bill requires the contingency fee contract,  
10 payments made under the contract, and the attorney general's  
11 written determination about the need for contingency fee  
12 representation to be posted on the attorney general's website.  
13 Other records relating to the contract are subject to Code  
14 chapter 22 (Iowa's open records law). The contracted private  
15 attorneys and paralegals are required to maintain detailed  
16 contemporaneous time records for presentation to the attorney  
17 general upon request. The attorney general is required to  
18 submit an annual report to the secretary of the senate and the  
19 chief clerk of the house of representatives that describes the  
20 state's retention of private attorneys on a contingency fee  
21 basis in the preceding calendar year.

22 The bill does not expand the state's authority to enter into  
23 contracts where no such authority previously existed.

24 The bill provides that this new Code chapter does not apply  
25 to legal services contracts under Code chapter 13B relating to  
26 public defenders.

27 The bill amends Code section 13.7, the current Code section  
28 relating to the retention of private counsel by executive  
29 branch departments and by the attorney general, to specify that  
30 the procedures in new Code chapter 23B apply.